

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA SANDERS and U.S. POSTAL SERVICE,  
POST OFFICE, Dallas, TX

*Docket No. 98-970; Submitted on the Record;  
Issued February 25, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on October 27, 1997.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on October 27, 1997.

Appellant, a distribution clerk, filed a claim on July 25, 1985 alleging that she injured her upper back lifting a container of flats. The Office accepted appellant's claim for cervical strain, right thoracic and right trapezius strains. Appellant filed a second claim on July 14, 1986 alleging that she injured her arms and upper back pushing mail on July 10, 1986. The Office accepted her claim for cervical strain. Appellant filed a notice of recurrence of disability on June 3, 1987 alleging that on May 26, 1987 she sustained a recurrence of disability causally related to her July 10, 1986 employment injury. The Office accepted this claim on January 25, 1988. Appellant filed a notice of recurrence of disability on December 3, 1993 alleging that on June 23, 1993 she sustained a recurrence of disability causally related to her July 10, 1986 employment injury. The Office denied this claim by decision dated February 4, 1994. By decision dated September 4, 1996, the Office terminated appellant's medical benefits. Appellant requested reconsideration of this decision on May 30, 1997. The Office refused to reopen appellant's claim for consideration of the merits on October 27, 1997.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not

previously considered by the Office.<sup>1</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>2</sup>

Appellant attempted to submit relevant new evidence in support of her reconsideration request. She submitted medical evidence; however, the most recent report was dated October 13, 1994 predating her termination by two years. Dr. R. Robert Ippolito, a Board-certified plastic surgeon, completed a form report and indicated that appellant had work restrictions without providing a diagnosis or opinion on the causal relationship between appellant's condition and her employment. This evidence is not sufficient to require the Office to reopen appellant's claim for review of the merits as it does not address the issue of whether appellant had any continuing residuals on or after September 4, 1996, the date the Office terminated appellant's medical benefits.

Appellant resubmitted evidence already considered by the Office in support of her reconsideration request. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.<sup>3</sup>

In support of her request for reconsideration, appellant submitted handwritten statements alleging that the second opinion physician in her case was biased. She also alleged that he attributed her condition to the facts of the 1985 rather than the 1986 employment injury. Appellant did not submit any evidence in support of these factual allegations and therefore the allegations are not sufficient to require the Office to reopen appellant's claim for review of the merits.

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<sup>1</sup> 20 C.F.R. § 10.138(b)(1).

<sup>2</sup> 20 C.F.R. § 10.138(b)(2).

<sup>3</sup> See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The October 27, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
February 25, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

A. Peter Kanjorski  
Alternate Member